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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 Nicholas Moran

11 Plaintiff,

No. CIV S-00-2210 FCD CMK

12 vs.

13 R.S. Gaitonde, et al.,

14 Defendants

15 ORDER

16 _____/
17 Petitioner is a state prisoner proceeding pro se with a petition for a writ of habeas
18 corpus pursuant to 28 U.S.C. § 2254. On March 8, 2005, judgment was entered in this court
19 denying the petition. On September 28, 2005, petitioner filed a notice of appeal. Before
20 petitioner can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c);
21 Fed. R .App. P. 22(b). Federal Rule of Appellate Procedure 22(b) requires the district court
22 judge who rendered a judgment denying such petition to “either issue a certificate of probable
23 cause or state the reasons why such a certificate should not issue.”

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1 The timely filing of a notice of appeal is a jurisdictional requirement. Scott v.
2 Younger, 739 F.2d 1464, 1466 (9th Cir. 1984). Here, the time limit for filing a notice of appeal
3 following entry of judgment is thirty days. See Fed. R. App. P. 4(a). Petitioner's notice of appeal
4 in this action was filed more than thirty days after entry of judgment.

5 The United States Court of Appeals for the Ninth Circuit has held that the
6 issuance of a certificate of probable cause cannot vest the court of appeals with jurisdiction if
7 jurisdiction is not proper in that court. Hayward v. Britt, 572 F.2d 1324, 1325 (9th Cir. 1978).
8 The rationale of Hayward applies with equal force to a certificate of appealability. For these
9 reasons, the court declines to issue a certificate of appealability.

10 IT IS SO ORDERED.

11 DATED:October 12, 2005

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13 /s/ Frank C. Damrell Jr.
14 FRANK C. DAMRELL JR.
15 United States District Judge
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